

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Petition for) WC Docket No. 02-202
Emergency Declaratory and)
Other Relief)

COMMENTS

The Independent Alliance, an informal association comprised of several small, rural Local Exchange Carriers ("LECs") furnishing originating and terminating access to interexchange carriers, hereby provides, by its attorneys, comments responsive to the above-captioned Petition filed by Verizon.

In its Petition, Verizon asserts "it is essential that surviving carriers be able to protect their ability to obtain payment for the services that they are required to provide to financially troubled companies."¹ It requests that the Commission: (1) allow carriers to revise their tariffs to better protect against nonpayment; (2) support independent local exchange carriers' efforts in bankruptcy courts to obtain adequate assurances of payment for services provided to customers in bankruptcy; (3) ensure that buyers of bankrupt carriers' existing service arrangements comply with the cure requirements of bankruptcy law; and (4) direct Competitive Local Exchange Carriers ("CLECs") to provide the information needed to co-ordinate carrier-to-carrier customer transfers.

The Independent Alliance generally supports Verizon's requests pertaining to the need for the Commission to be responsive to LEC attempts to better protect themselves

At 1.

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against “slow-paying” and “non-paying” customers prior to bankruptcy and, thereafter, to obtain adequate assurance of payment for services provided to bankrupt interexchange carriers.² When the interexchange industry was healthy, slow-paying customers were an annoyance; and non-paying customers, with few exceptions, were non-existent. With that the case, tariff provisions addressing “security” and “discontinuance” requirements were little changed over nearly two decades. Those tariff provisions seemed to be adequate because there seldom was any need to apply them. That has changed, as the Commission is well aware. Late-payers have become non-payers during the months preceding bankruptcy, such that suppliers of essential services, namely, exchange access providers, are unable to collect in full for the services they provided to interexchange carriers. It perhaps might be unnecessary to strengthen the relevant tariff provisions if it could be assured that the worst has already occurred, but no such guarantee can be given. It is widely recognized that none of the remaining interexchange carriers represents a picture of financial health, and it is entirely possible that additional crises will arise.³

In the context of several recent attempts by exchange access providers to modify their tariffs to obtain greater protection against non-payment, the Commission has been less than encouraging. In one case, the Commission suspended proposed tariff revisions for the full five-month statutory period,⁴ and in other instances it has forced deferrals of proposed changes. The result of these actions is that exchange access providers have been denied the opportunity to protect their legitimate interests via the employment of

² The Independent Alliance takes no position at this time with respect to the Verizon proposal involving CLEC co-ordination of carrier-to-carrier customer transfers.

³ It's been reported that Qwest's vendors, fearful of its condition following the collapses of Global Crossing and WorldCom, are seeking advance payments, deposits, and other means of payment assurances at this time.

⁴ Iowa Telecommunications Services, Inc. (Transmittal No. 22), DA 02-1732, rel. July 17, 2002.

commercially reasonable and widely used – outside of telecommunications – measures designed to better assure payment for the essential services they furnish.

Whatever the impact on a company like Verizon, the adverse effect on smaller carriers like those comprising the Independent Alliance is even more pronounced. This is because, as a percentage of total revenues, the amounts unpaid represent a higher proportion.⁵ And, when their revenue requirements are not being met, these smaller carriers have little choice except to make up the shortfall via rate increases for other customers or, alternatively, to take measures that result in a diminution of service.

Independent Alliance members recognize the broad policy implications of what is occurring in these unprecedented times, and they have no quarrel with the Commission's desire to minimize, if not eliminate altogether, any adverse impact on end-user customers of interexchange carriers experiencing financial turmoil. However, Commission actions or non-actions that effectively shift the risk of losses to exchange access providers are not an acceptable solution. If exchange access providers are required to fulfill their obligation to furnish essential services to interexchange carriers without a reasonable opportunity to pursue what is owed them for those services, the ills affecting the interexchange industry will spread to the exchange access industry as well.

Accordingly, the Independent Alliance supports Verizon's position that the Commission must provide exchange access carriers a realistic opportunity to protect their legitimate business interests, including the timely payment of amounts due them by interexchange carriers. In this regard, the Commission must allow these carriers to

⁵ For the Second Quarter, Verizon, which had revenues of \$16.8 billion, wrote off \$183 million, or approximately one percent of its revenues, due to WorldCom's bankruptcy. This percentage is higher for smaller carriers whose exchange access service revenues from WorldCom represent a larger percentage of their overall revenues.

amend their tariffs as they deem appropriate subject, of course, to tariffing requirements. Indeed, the Commission's tariffing rules provide substantial protection against any vague, arbitrary or over-reaching tariff revisions that might be proposed. The fact that such revisions must be specific, unambiguous, filed on advance notice and subject to protest opportunities, and in all other respects compliant with the requirements of Sections 201 (b), 202 (a) and 203 of the Communications Act affords ample protection to those who stand to be affected by any proposed revisions. Absent a capability to implement reasonable protections against non-payment, exchange access providers, as Verizon aptly notes, would be forced "to act as guarantors of their competitors' business plans by leaving them holding the financial bag while having to ensure continuity of service for customers."⁶

The Independent Alliance also agrees that the Commission should support LEC efforts in the bankruptcy courts to obtain adequate assurance of payment for services provided to interexchange carriers operating in bankruptcy. Even if LECs are classified as "utilities" rather than "critical trade vendors" under bankruptcy law, the Commission nevertheless should support the proposition that exchange access providers are at least as vital to interexchange carrier operations during bankruptcy as are those who function as billing agents or contractors for the interexchange carrier. Obviously, without LEC-provided exchange access services, there would be no interexchange service to bill.


If not payment in advance, then it is critical that prompt payment be required upon the rendition of an invoice and, further, that all necessary procedures be implemented to allow exchange access providers to recover promptly what is owed them

⁶ Verizon Petition at 2.

in the event of non-payment. In these regards, the Commission should make it clear that decisions and orders issued in these areas by a bankruptcy court supersede and thereby override any contrary requirements set forth in otherwise applicable LEC tariffs.⁷

In view of the foregoing, the Commission is requested to take into account these Comments in connection with its consideration of Verizon's Petition.

Respectfully submitted,



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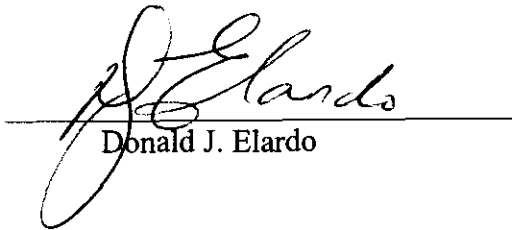
⁷ Alternatively, the Commission could simply signal its receptivity to carrier-initiated tariff revisions that achieve this order of precedence in appropriate circumstances.

CERTIFICATE OF SERVICE

I, Donald J. Elardo, hereby certify that copies of the foregoing "Comments" were mailed, first-class, postage prepaid, to:

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